No. 91-7604

In The

Supreme Court of the United States

October Term, 1992

JEFFERY ANTOINE,

Petitioner,

v.

BYERS & ANDERSON, INC. AND SHANNA RUGGENBERG,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Is a federal court reporter who failed to comply with repeated court orders and statutory duties to produce a trial transcript absolutely immune from a claim for constitutional violations?

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BRIEF OF PETITIONER

Petitioner Jeffery Antoine asks the Court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit in *Antoine v. Byers & Anderson, Inc.*, 950 F.2d 1471 (9th Cir. 1991), *cert. granted*, 121 L. Ed. 2d 240 (1992).

OPINIONS AND JUDGMENTS BELOW

The opinion of the court of appeals is reported at 950 F.2d 1471. The order of the district court granting defendants' motion for summary judgment is set forth in the Joint Appendix ("JA") at 23. Two companion appellate cases relate to Mr. Antoine's criminal appeals. The first, *United States v. Antoine*, is published at 906 F.2d 1379 (9th Cir.), *cert. denied*, 111 S. Ct. 398 (1990). The second is unpublished and set forth at JA 66.

JURISDICTION

The Court has jurisdiction to review this case under 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on December 13, 1991. Mr. Antoine petitioned the Court for a writ of certiorari on March 13, 1992. On October 13, 1992, the Court granted the petition.

STATUTORY PROVISION

In reaching its decision below, the court of appeals relied in part on the Court Reporter Act, 28 U.S.C. § 753, the pertinent text of which is set forth in Appendix A.

STATEMENT OF THE CASE

Mr. Antoine challenges the grant of absolute immunity to a court reporter who failed to produce a trial transcript, in direct violation of numerous express court orders and in disregard of her duties under statute and court rule. The reporter's blatant disregard of such orders and deadlines resulted in a multi-year delay in Mr. Antoine's appeal of his criminal conviction.

Statement of Facts

During 1986, the United States District Court for the Western District of Washington in Tacoma contracted on an emergency basis with a private firm, respondent Byers & Anderson, Inc., to provide court reporting services. Under the contract, Byers & Anderson sent one of its reporters, respondent Shanna Ruggenberg, to serve as the court reporter during Mr. Antoine's two-day criminal jury trial in March 1986. (JA 17, 24.)

Mr. Antoine was convicted. He appealed, immediately ordered the transcript of the proceedings from Ms. Ruggenberg, and unwittingly paid her $700, unaware that he was entitled to a transcript without charge because of his *in forma pauperis* status. The court of appeals ordered that the transcript be filed by May 29, 1986. Ms. Ruggenberg failed to meet the deadline but did not request an extension of time. More than three years of motions, court orders, and hearings – all directed at obtaining a simple transcript from a two-day trial – followed this initial failure to meet the filing deadline. The court of appeals set five subsequent filing deadlines. Ms. Ruggenberg repeatedly failed to provide the transcript,

request an extension, communicate with counsel, comply with the orders, or offer an explanation for her failure. (JA 20, 24-25, 38, 40.)

Ms. Ruggenberg eventually produced a partial transcript. In July 1988, she stated in an affidavit that she had lost the remaining notes and tapes. In August 1988, the court of appeals ordered the parties to reconstruct the record pursuant to Fed. R. App. P. 10(c). Before the reconstruction, in April 1989, Ms. Ruggenberg suddenly discovered additional notes and tapes, which her counsel delivered to the district court. (JA 22, 24.)

On May 30, 1989, more than three years after Mr. Antoine's criminal trial, a substitute reporter filed a partially reconstructed substitute transcript. The reconstructed transcript remained defective; it included inaudible words and phrases, garbled testimony, insufficient identification of speakers, no charge to the jury, and no transcript of the sentencing. The substitute reporter candidly acknowledged that the transcript was incomplete, since "notes from the trial were not adequate by themselves to produce a complete transcript." She specifically warned that she could not "vouch for the completeness of [sic] accuracy of the transcript." (JA 41, 43.)

Mr. Antoine's criminal appeal was first argued after a delay of four years. On July 9, 1990, the Ninth Circuit vacated and partially remanded his criminal conviction to determine whether he was prejudiced by lack of a complete transcript and whether the delay impaired his defense on retrial. The court refused to order an acquittal and relied in part on the availability of a civil remedy for

any due process violation. *See United States v. Antoine*, 906 F.2d at 1383.

On remand, the district court found that Mr. Antoine could show no specific prejudice in his appeal from the lack of a trial transcript and reinstated his conviction. (JA 45-50.) Mr. Antoine appealed this decision to the Ninth Circuit. On June 23, 1992, more than six years after the initial appeal, the Ninth Circuit affirmed.[1] (JA 66-69.)

Decisions Below

Mr. Antoine filed this action *pro se* in the district court in May 1988, claiming federal constitutional violations and state law breach of contract. He initially characterized the action as a civil rights claim under 42 U.S.C. § 1983. (JA 2.) The court of appeals in the opinion below correctly observed that the jurisdictional basis for the original complaint in the district court was federal question jurisdiction under 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).[2] The original mischaracterization did not affect the court's jurisdiction.

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[1] Mr. Antoine's appeal did not affect his sentencing. He remained in prison throughout his first criminal appeal and was released in September 1990.

[2] Just before trial, the district court appointed counsel for Mr. Antoine. Court-appointed counsel corrected the pleading error by substituting a *Bivens* claim in an amended complaint, although the motion for leave to file was not granted because the case was dismissed on grounds of absolute immunity. (JA 31.)

The district court granted defendants' motions for summary judgment, ruling that Ms. Ruggenberg was entitled to absolute immunity because her acts and omissions were within her official capacity as a quasi-judicial officer. The court also found that because the agent, Ms. Ruggenberg, was not liable, the principal, Byers & Anderson, was free of liability. The court dismissed Mr. Antoine's federal claims and dismissed without prejudice his pendent state law claims. (JA 24-31.)

On appeal, the United States Court of Appeals for the Ninth Circuit affirmed. (JA 51.) The Ninth Circuit held that a court reporter's activities are "part of the adjudicatory function," and therefore insulated by absolute immunity. *Antoine v. Byers & Anderson, Inc.*, 950 F.2d at 1475. The court of appeals also held that Ms. Ruggenberg had absolute immunity despite her failure to prepare a timely transcript and to comply with court orders and the Court Reporter Act. The court acknowledged the conflict between its holding and that of the Eighth Circuit,[3] which characterizes court reporter duties as ministerial, not discretionary, and thus not protected by absolute immunity.

SUMMARY OF ARGUMENT

Absolute immunity is an extreme measure that shields even the most flagrant constitutional violations. As such, the Court invokes the measure sparingly and only where justified by overriding public policy considerations. In *Forrester v. White*, 484 U.S. 219 (1988), the Court

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[3] *See McLallen v. Henderson*, 492 F.2d 1298 (8th Cir. 1974).

articulated a two-step functional approach to absolute immunity questions: (1) examination of the nature of the official's functions and (2) evaluation of the effect of exposure to liability on the exercise of those functions. Nothing in the Court's long line of precedent, the common law, or public policy justifies absolute judicial immunity for a court reporter. Qualified, rather than absolute, immunity is the presumption.

The hallmark of judicial immunity is a judicial act marked by adjudication and discretion. The Court's decisions distinguish judicial acts from legislative, administrative, executive, or ministerial acts. The essence of a judicial act is adjudicative decisionmaking.

That the function of a court reporter is neither judicial nor adjudicative needs little elaboration. The reporter is a stenographer required by statute to produce a verbatim transcript. 28 U.S.C. § 753(b). The reporter exercises no discretion, makes no decisions, and weighs no evidence. Court reporters do not adjudicate, nor are they "functionally comparable" to judges. The court of appeals' analysis that reporters are "part and parcel of the judicial process" begs the question of whether court reporting is a judicial act. To be part of the process is not sufficient. Absolute judicial immunity requires a judicial act. The character of the function is controlling, not the importance of the act or the title of the actor.

None of the policy considerations that support absolute immunity are present here. Immunity is intended to preserve independence and insulate officials from undue influence and coercion. Unlike others in the court system who receive absolute immunity – judges, prosecutors in

their adjudicatory role, witnesses, and jurors – court reporters exercise no independent judgment, have no discretionary powers to be shaded or chilled, and are not called upon to make unpopular or difficult decisions.

Because court reporters fill a limited, statutorily defined role, the prospect of litigation does not impair the reporters' function. Nor have reporters been subject to a cascade of vexatious, unwarranted claims. Denying court reporters absolute immunity will not hamper the administration of justice; rather, the judicial process will benefit by holding court reporters accountable for inexcusable conduct.

In balancing the court reporters' role in the courts with victims' right to redress constitutional grievances, qualified, rather than absolute, immunity is sufficient. Such a rule follows both the common law – where absolute immunity was granted only for judicial acts – and the majority of circuit and district courts that have considered the issue.

The court of appeals' decision, which cloaks the court reporter's ministerial conduct with the same protection as a judge's adjudicatory function, should be reversed. A court reporter who violates court orders, ignores statutory duties, and totally abdicates her responsibilities should not be granted absolute immunity.

ARGUMENT

The scope of this case is narrow – Mr. Antoine seeks damages for a constitutional violation arising from

Ms. Ruggenberg's[4] failure and refusal to provide a transcript from a two-day criminal trial. Specifically, Ms. Ruggenberg:

1. Disobeyed six court-ordered deadlines for filing the trial transcript;

2. Failed to communicate with counsel about the delays;

3. Represented in sworn testimony to the court that she lost part of the notes and tapes; however, she subsequently discovered additional notes and tapes;

4. Failed to seek an extension or permission for the delays; and

5. Failed ultimately to provide a completed transcript, leaving a substitute reporter to reconstruct a deficient transcript.

Antoine v. Byers & Anderson, 950 F.2d at 1472-73. (JA 53-54.)[5]

Mr. Antoine's only remedy for this now long-completed constitutional violation is an action for damages. As Justice Harlan noted, "it is damages or nothing." *Bivens*, 403 U.S. at 410 (Harlan, J., concurring). Cloaking

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[4] For ease of reference, respondents Ms. Ruggenberg, the court reporter, and Byers & Anderson, the court reporting firm, are collectively referred to as "Ms. Ruggenberg" or "the court reporter."

[5] This case does not raise any issue of judicial immunity for other possible acts by court reporters, such as excusable or negligent errors in transcription or court-approved delays in transcript completion. Nor is the issue of a new trial or other remedy on the merits for lack of a transcript presented here.

the court reporter with absolute immunity will "seriously erode the protection provided by basic constitutional guarantees." *Butz v. Economou*, 438 U.S. 478, 505 (1978).

From early common law to the present, the Court has followed a functional approach in determining whether to shield official conduct by absolute immunity. The function and the nature of the acts protected, not the job title, go to the heart of immunity. *Forrester*, 484 U.S. at 224, 227; *Ex parte Virginia*, 100 U.S. 339, 348 (1880). Against this backdrop, the Court is asked to analyze the function of a court reporter.

Section I of this brief outlines the strict standards for grants of absolute immunity. Section II demonstrates why court reporters are not entitled to absolute immunity. Under the Court's functional approach, immunity requires a judicial act. Section II thus describes the ministerial, nonadjudicatory role of a court reporter and explains why court reporting is a stenographic task rather than a judicial act. In keeping with the teaching of *Forrester*, the absence of any compelling public policy basis for absolute immunity is also laid out. Section II ends with a discussion of the lack of any common law precedent for absolute immunity for court reporters, a prerequisite for immunity. Finally, Section III concludes that, at most, court reporters should be shielded by qualified immunity.

I. ABSOLUTE IMMUNITY IS AN EXTREME MEASURE THAT RARELY SHOULD BE INVOKED

Because it "contravenes the basic tenet that individuals be held accountable for their wrongful conduct," *Westfall v. Erwin*, 484 U.S. 292, 295 (1988), absolute immunity is an extreme measure that should be invoked only

sparingly and with great caution, especially without an express constitutional or statutory basis. *Forrester*, 484 U.S. at 223-24. *See also Hafer v. Melo*, 112 S. Ct. 358, 363-64 (1991).[6] "Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy." *Forrester*, 484 U.S. at 224. *See Burns v. Reed*, 111 S. Ct. 1934, 1939 (1991); *Malley v. Briggs*, 475 U.S. 335, 340 (1986); *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982); *Butz*, 438 U.S. at 506.

Whether applied to judges, legislators, prosecutors, or the President, the principle underlying absolute immunity is the same – to preserve independent and impartial judgment and to encourage vigorous and fearless performance of official duties. *Forrester*, 484 U.S. at 223. As to judges, the specific public interest lies in maintaining the independence, impartiality, and efficiency of the judicial process. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347-48 (1872). Potential liability can threaten the judiciary's independence, intimidating judges into abandoning their objectivity. *Forrester*, 484 U.S. at 223.

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[6] In determining the existence and scope of immunity, suits against state officials under 42 U.S.C. § 1983, such as *Forrester*, and suits against federal officials brought directly under the Constitution are treated identically. *Harlow v. Fitzgerald*, 457 U.S. 800, 809 (1982) (citation omitted).

II. COURT REPORTERS ARE NOT ENTITLED TO ABSOLUTE IMMUNITY

A. Absolute Immunity Must Be Analyzed Under the Functional Approach

Over the years, the Court has refined a two-step functional approach in deciding absolute immunity questions. This approach seeks to "examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and . . . to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions." *Forrester*, 484 U.S. at 224. Echoing the teaching of *Ex parte Virginia*, 100 U.S. at 348, decided over 100 years earlier, *Forrester* emphasizes that absolute immunity hinges on the character of the act rather than the title of the actor.

1. Absolute Judicial Immunity Requires a Judicial Act

The touchstone of judicial immunity is a judicial act that involves adjudication and discretion. In the case of an official other than a judge, the conduct must have "functional comparability" to adjudication, i.e., decision-making. *Imbler v. Pachtman*, 424 U.S. 409, 423 n.20 (1976). The test is not whether the conduct is part of the judicial process or important to the administration of justice but whether it is adjudication. Discretion is paramount.

The Ninth Circuit erred in characterizing the court reporter's function as a judicial act because it is "functionally part and parcel of the judicial process." *Antoine*, 950 F.2d at 1476. This conclusory analysis misses the mark

by focusing on the relationship of the act to the judiciary rather than on the character of the act. In addition, its impact is too sweeping; under this approach, there would be blanket immunity for virtually any job in the judicial system because it is "functionally" part of the judiciary. Repeating pro forma the phrase "judicial act" without analysis is not enough.

The Court's decisions illustrate that the Ninth Circuit's approach is incorrect. The Court has never held that the importance of the function or its support of other functions determines absolute immunity. Even crucial functions do not automatically enjoy absolute immunity. Thus, in *Harlow*, the Court explained:

> If the President's aides are derivatively immune because they are essential to the functioning of the Presidency, so should the Members of the Cabinet . . . be absolutely immune. Yet we implicitly rejected such derivative immunity in *Butz*.

457 U.S. at 810 (footnotes omitted). The Court went on to observe that

> [t]he undifferentiated extension of absolute "derivative" immunity to the President's aides therefore could not be reconciled with the "functional" approach that has characterized the immunity decisions of this Court.

Id. at 811.[7]

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[7] The Court also denied absolute immunity in many other instances where the challenged conduct was important, even essential, to the governmental function served. *E.g., Burns*, 111 S. Ct. at 1944-45 (no absolute immunity for prosecutor's legal advice to police); *Malley*, 475 U.S. at 342 (no absolute immunity for police officer's conduct, even though a "vital part of the administration of criminal justice"); *Harlow*, 457 U.S. at 810 (no absolute immunity for Presidential aides even if essential to functioning of the Presidency).

Similarly, the Court's denial of absolute immunity to a judge for employment decisions follows the Court's long-standing functional approach:

> [W]e think it clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester. Those acts – like many others involved in supervising court employees and overseeing the efficient operation of a court – may have been quite important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative.

Forrester, 484 U.S. at 229.[8] Focusing on the character of the act – administrative – the Court rejected absolute immunity. *Forrester* itself demonstrates that the reporter's conduct was not "judicial or adjudicative." *Id.*

2. "Judicial Acts" Are Marked by Adjudication

Historically, judicial acts[9] are those that are adjudicative, rather than legislative, administrative, executive, or ministerial. *See Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 731 (1980). In

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[8] *See also Ex parte Virginia*, 100 U.S. at 348-49 (no absolute immunity to judge for improper selection of jurors; importance to the judicial process was not determinative).

[9] Even legal dictionaries recognize that a "judicial act" is one that "involves exercise of discretion or judgment." *See, e.g.*, BLACK'S LAW DICTIONARY 846 (6th ed. 1990).

comparing judges and jurors with prosecutors, the Court noted that "all three officials . . . exercise a discretionary judgment on the basis of evidence presented to them." *Cf. Imbler*, 424 U.S. at 423 n.20. Judicial functions or acts are characterized by the exercise of the power to make a binding and conclusive decision, the exercise of power to hear and determine a controversy, the application of objective standards for the determination of an issue, and the declaration or alteration of individual rights and obligations. *See* J. Randolph Block, Stump v. Sparkman *and the History of Judicial Immunity*, 1980 DUKE L.J. 879, 892.

A substantial body of precedent defines judicial acts. Every one of the Court's decisions that granted judicial immunity involved discretionary, adjudicative actions.[10] Traditional justifications for official immunity do not support absolute immunity for nondiscretionary functions. *Westfall*, 484 U.S. at 297.

[10] The court has granted absolute immunity to the following judicial acts by judges: decision to disbar an attorney, *Randall v. Brigham*, 74 U.S. (7 Wall.) 523 (1869); decision to strike an attorney's name from the rolls of the court, *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1872); entry of judgment accompanied by false statements in an opinion, *Alzua v. Johnson*, 231 U.S. 106 (1913); entry of criminal conviction, although contrary to Supreme Court authority, *Pierson v. Ray*, 386 U.S. 547 (1967); decision to approve a petition, *Stump v. Sparkman*, 435 U.S. 349 (1978); issuance of an injunction, *Dennis v. Sparks*, 449 U.S. 24 (1980); and issuance of an order to bring a public defender into the courtroom, *Mireles v. Waco*, 112 S. Ct. 286 (1991).

3. Court Reporting Is a Stenographic Task, Not a Judicial Act

The judicial acts in the Court's long line of cases recognizing absolute judicial immunity stand in stark contrast to the ministerial, nondiscretionary role of a court reporter. The function of a court reporter is straightforward and well-defined – to record the proceedings verbatim and transcribe and deliver the record promptly upon the request of a court or a party. Nothing more, nothing less. The reporter's role has been described as follows:

> A court stenographer, notwithstanding the fact that he is an Officer of the Court, by the very nature of his work performs no judicial function. His duties are purely ministerial and administrative; he has no power of decisions.[11]

As late as 1942, no federal law required a verbatim report of any judicial proceeding, nor was there any statutory appointment of court reporters or stenographers. By practice, parties agreed upon and paid private stenographers to report proceedings. *Miller v. United States*, 317 U.S. 192 (1942), *reh'g denied*, 317 U.S. 713 (1943).

This practice changed with the 1944 passage of the Court Reporter Act (Jan. 20, 1944, ch. 3, 58 Stat. 3, later codified in 28 U.S.C. § 753). The Act provides for an

[11] *Waterman v. State*, 35 Misc. 2d 954, 232 N.Y.S.2d 22, 26 (1962), *rev'd on other grounds*, 19 A.D.2d 264, 241 N.Y.S.2d 314 (1963), *aff'd*, 14 N.Y.2d 793, 251 N.Y.S.2d 30, 200 N.E.2d 212 (1964), *aff'd*, 17 N.Y.2d 613, 268 N.Y.S.2d 929, 216 N.E.2d 26 (1966).

official reporter and establishes specific duties.[12] "[T]he requirements of 28 U.S.C. § 753(b) are 'mandatory and not permissive.' " *Casalman v. Upchurch*, 386 F.2d 813 (5th Cir. 1967) (quoting *Calhoun v. United States*, 384 F.2d 180, 183 (5th Cir. 1967)).

The production of a transcript is not the product of independent judgment and does not involve decision-making discretion. The task requires only that court reporters follow established procedures and guidelines. *Cf. Westfall*, 484 U.S. at 299 (no absolute immunity for acts following established procedures and guidelines). Court reporting is a classic example of an administrative, ministerial task:

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[12] 28 U.S.C. § 753(b) requires court reporters:

1. To record verbatim each session of the court;
2. To attach the official certificate to the original records and promptly file them with the clerk;
3. To transcribe and certify such parts of the record as may be required by any rule or order of court, unless the proceedings were recorded by electronic sound recording and the original records certified by her and filed with the clerk;
4. To transcribe promptly, upon the request of any party to any proceeding so recorded or of a judge of the court, the original records of the requested parts of the proceedings and attach to the transcript the official certificate, and deliver the same to the party or judge making the request; and
5. To deliver promptly to the clerk a certified copy of any transcript so made.

Federal Rule of Appellate Procedure 11(b) further provides that the court reporter must complete the transcript within 30 days of receipt of any order for that transcript or else request an extension of time from the clerk of the court of appeals.

> When the thrust of a *statutory* command addressed to a public official is unmistakable, his duty to comply with it is "ministerial."

Elmo Division of Drive-X Co. v. Dixon, 348 F.2d 342, 346 (D.C. Cir. 1965) (emphasis in original).

In determining whether court reporters deserve absolute immunity, the analysis begins and ends with the simple test of whether a court reporter is "functionally comparable" to a judge. *Butz*, 438 U.S. at 513. Absent the exercise of "independent judgment," the court reporter is not. *Id.* To state, as the court of appeals did, that "court reporting activities are part of the adjudicatory function," *see Antoine v. Byers & Anderson*, 950 F.2d at 1475 (JA 60.), is to miss the distinction between judging and reporting.

Court reporters do not adjudicate. Court reporters do not evaluate evidence and make binding and conclusive decisions. They do not have the power to hear and determine controversies. Nor may they declare or alter the rights and obligations of individuals. Court reporters must transcribe court proceedings verbatim and provide timely transcripts when requested. No discretion is involved in carrying out those duties. Their function, albeit requiring training and practice, is clearly defined and limited by statute.

Although producing a trial transcript is "quite important in providing the necessary conditions of a sound adjudicative system," its importance is no basis for granting immunity. *Forrester*, 484 U.S. at 229. The function of a court reporter is not adjudicative; the reporter does not engage in discretionary "judicial acts." Absolute immunity is inappropriate because

> the doctrine of judicial immunity is meant to protect only judicial acts, which, by definition, are acts requiring judicial discretion. When a judge does not exercise judicial discretion, the policies supporting absolute immunity disappear. A ministerial act requires no discretion . . . .

Joseph Romagnoli, Note, *What Constitutes a Judicial Act for Purposes of Judicial Immunity?*, 53 FORDHAM L. REV. 1503, 1513 (1985) (footnotes omitted).

B. No Overriding Considerations of Public Policy Favor Immunity for Court Reporters

The second prong of the *Forrester* test requires evaluation of "the effect that exposure to particular forms of liability would likely have on the appropriate exercise of [official] functions." *Forrester*, 484 U.S. at 224. Although the second prong is essential to a finding of absolute immunity, the court of appeals ignored this aspect of *Forrester*.

Given the sparing recognition of absolute immunity, the Court has made it clear that the burden lies with the official, not the victim:

> Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy.

Id. Rather than supporting absolute immunity for court reporters, public policy argues squarely against it. Absolute immunity is not required to protect court reporters' legitimate exercise of their function, nor will the absence of absolute immunity subject reporters to harassment or

intimidation. Indeed, holding court reporters liable for their statutory duties will encourage compliance and contribute to the effective and speedy administration of justice.

1. The Policies Supporting Absolute Immunity for Government Officials Do Not Apply to Court Reporters

Unique public policy considerations underlie the few situations where the Court has granted absolute immunity.[13] Immunity for key participants in the adjudicatory aspects of the judicial process – prosecutors, witnesses, and jurors – reflects the same policy that supports immunity for judges, namely

> concern that harassment by unfounded litigation would cause a deflection of . . . energies from [their] public duties, and the possibility that [they] would shade [their] decisions instead of exercising the independence of judgment required by [the] public trust.

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[13] The Court's immunity decisions with respect to other branches of government are relevant to the analysis in this case. In *Imbler*, the Court noted that

> our earlier decisions on § 1983 immunities were not products of judicial fiat that officials in different branches of government are differently amenable to suit under § 1983. Rather, each was predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it.

424 U.S. at 421.

Imbler, 424 U.S. at 423. *Imbler* teaches that the absence of absolute immunity "would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system."[14] 424 U.S. at 427-28. Likewise, witnesses must be insulated from self-censorship, and the independence of jurors preserved. *Briscoe v. LaHue*, 460 U.S. 325, 328, 335 (1983).

The Court also accords absolute immunity to executive or administrative officers for adjudicative acts that are "functionally comparable" to those for which judges have absolute immunity. *Butz*, 438 U.S. at 513. In the same vein, federal executive officials are absolutely immune from state tort law liability when the challenged conduct is discretionary and falls within the scope of their duties. *Westfall*, 484 U.S. at 297.

Like judges, legislators perform a decisionmaking function. Legislative immunity is granted to "insure that the legislative function may be performed independently without fear of outside interference." *Supreme Court of Virginia*, 446 U.S. at 731. Finally, the President of the United States has absolute immunity because of the President's unique Constitutional role. *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

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[14] Absolute immunity also has been afforded for prosecutorial functions exercised by "quasi-prosecutors": for example, administrative agency attorneys involved in adjudication. *Butz*, 438 U.S. at 516-17.

All of these officials share in common the exercise of discretion. None of the policy reasons supporting immunity for these officials is implicated in the case of a court reporter.

2. Absolute Immunity Is Not Required to Preserve Independent Decisionmaking

The overriding rationale for judicial immunity is to "[free] the judicial process of harassment or intimidation" to preserve the sanctity of independent decisionmaking. *Forrester*, 484 U.S. at 226. In contrast to judges, however, court reporters make no "decisions," and do not ever find themselves duty-bound to issue bold, courageous, or unpopular rulings. Court reporters exercise no independent judgment. There is no discretion that could be chilled, no decision to be shaded, and no conduct to be intimidated. The essence of a court reporter's ministerial function – recording proceedings verbatim and preparing and delivering transcripts as requested – will not be impaired by permitting legitimate claims under *Bivens* or 42 U.S.C. § 1983.

Moreover, unlike court reporters, officials entitled to absolute immunity are "subject to other checks that help to prevent abuses of authority from going unredressed." *Mitchell v. Forsyth*, 472 U.S. 511, 522 (1985); *see Tenney v. Brandhove*, 341 U.S. 367, 378 (1951). Prosecutors are constrained by ethical and professional standards and are subject to professional discipline. *Cf. Malley*, 475 U.S. at 343 n.5 ("[t]he absence of a comparably well-developed and pervasive mechanism for controlling police misconduct weighs against allowing absolute immunity"). Similarly, judges are subject to judicial canons of ethics,

impeachment, disciplinary action, controlling precedent, and appellate review. The President of the United States is subject to impeachment, in addition to the traditional checks and balances arising from the separation of powers. Witness testimony is subject to perjury prosecution and to the "crucible of the judicial process so that the factfinder may consider it, after cross-examination, together with the other evidence in the case to determine where the truth lies." *Imbler*, 424 U.S. at 440 (White, J., concurring).

Court reporters, on the other hand, are not subject to a mandatory ethical code or professional disciplinary proceedings. Nor do court reporters face removal by the public, as do elected officials such as executives, legislators, chief state prosecutors, and, in some jurisdictions, state judges.

3. Absolute Immunity Is Not Required to Prevent Unwarranted Litigation

Concern over vexatious, unwarranted litigation is a legitimate, although not determinative, consideration in weighing immunity. *Imbler*, 424 U.S. at 437. However, nothing suggests that court reporters will face unwarranted litigation. The majority of federal circuits that have considered the issue hold that court reporters are entitled to qualified, rather than absolute, immunity.[15]

The relatively few decisions on court reporter liability are devoid of any complaint that the courts have

[15] These decisions are discussed *infra* note 30.

been flooded with litigation or that reporters have been hampered in the exercise of their legitimate functions. A statistical review of cases suggests the opposite. For example, the Eighth Circuit rejected absolute immunity for court reporters in 1974. *McLallen v. Henderson*, 492 F.2d 1298 (8th Cir. 1974). Statistics show that in excess of 20,000 civil cases were docketed in that court from 1975 through 1991.[16] Among these, only four reported cases involved court reporter liability.[17] The same de minimis impact was obtained in the district courts of that circuit, with only two cases reported out of more than 200,000 civil filings.[18] The Second Circuit filings reflect the same absence of any impact as a result of qualified immunity. Available statistics for 1984 through 1991[19] reflect at least

[16] Civil filings include private civil, United States civil, bankruptcy, original proceedings, and prisoner petitions. These figures do not include administrative proceedings and criminal cases. Eighth Circuit filing statistics are compiled from the ANNUAL REPORTS OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (1975 through 1979) and the UNITED STATES COURTS EIGHTH CIRCUIT REPORTS (1980 through 1991).

Obviously, looking at cases filed does not reveal the subject of the cases. But it is striking that so few of the thousands of filings resulted in reported cases on court reporters.

[17] *Smith v. Tandy*, 897 F.2d 355 (8th Cir.), *cert. denied*, 111 S. Ct. 177 (1990); *White v. Murphy*, 789 F.2d 614 (8th Cir. 1986); *Holt v. Dunn*, 741 F.2d 169 (8th Cir. 1984); *Woods v. Dugan*, 660 F.2d 379 (8th Cir. 1981).

[18] *Formanek v. Arment*, 737 F. Supp. 72 (E.D. Mo. 1990); *Woods v. Dugan*, 519 F. Supp. 749 (E.D. Mo.), *vacated & remanded*, 660 F.2d 379 (8th Cir. 1981).

[19] Second Circuit filing statistics are compiled from the ANNUAL REPORTS OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (1988 and 1989) and the UNITED STATES

18,000 civil filings without a single reported case involving court reporter liability following the 1983 ruling in *Green v. Maraio*, 722 F.2d 1013 (2d Cir. 1983). In the district courts of the Second Circuit, only three cases could be found that raised court reporter liability in the more than 160,000 filings for that period.[20]

In any event, although the threat of litigation should not be lightly disregarded, this concern does not itself justify absolute immunity. Justice White has written:

> [T]hese adverse consequences are present with respect to suits against policemen, school teachers, and other executives, and have never before been thought sufficient to immunize an official absolutely no matter how outrageous his conduct. Indeed, these reasons are present with respect to suits against all state officials and must necessarily have been rejected by Congress as a basis for absolute immunity under 42 U.S.C. § 1983, for its enactment is a clear indication that at least some officials should be accountable in damages for their official acts. Thus, unless the threat of suit is also thought to injure the governmental decision-making process, the other unfortunate consequences flowing from damage suits against state officials are sufficient only to extend a qualified immunity to the official in question.

COURTS FOR THE SECOND CIRCUIT, SECOND CIRCUIT REPORT (1984 through 1987; 1991).

[20] *Mathis v. Bess*, 761 F. Supp. 1023, *reh'g denied, modified*, 763 F. Supp. 58, *dismissed*, 767 F. Supp. 558 (S.D.N.Y. 1991); *Neville v. Dearie*, 745 F. Supp. 99 (N.D.N.Y. 1990); *Sims v. Sacripanti*, No. 84 Civ. 3196 (JES) (S.D.N.Y. 1986) (slip op.).

Imbler, 424 U.S. at 436-37 (White, J., concurring) (footnote omitted).

Additionally, what counts is not the threat of litigation, but the effect of that threat on the function in question. Because of the nature of court reporters' duties, the threat of litigation cannot affect in any manner court transcripts, except perhaps to improve their quality and assure their existence.[21] Court reporters will face liability not for doing their job but for failing to act despite a clear duty to do so. Liability here is consistent with the Court's view that "[w]here an official could be expected to know that certain conduct would violate statutory or constitutional rights, he *should* be made to hesitate." *Harlow*, 457 U.S. at 819 (emphasis supplied).

Finally, the courts themselves have ultimate control over any frivolous claims. As the Court noted in *Butz*:

> Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss.

438 U.S. at 507-08.[22]

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[21] Indeed, with the advent of audiotape and videotape recording and other technological advances, accuracy will be improved and the chances for error reduced. *See* A COMPARATIVE EVALUATION OF STENOGRAPHIC AND AUDIOTAPE METHODS FOR UNITED STATES DISTRICT COURT REPORTING (Federal Judicial Center 1983).

[22] This point is underscored in the reported decisions of the Eighth and Second Circuits, discussed above. Of the nine cases set forth *supra* in notes 17, 18 and 20, eight were dismissed against the court reporters upon motion.

4. Absolute Immunity Is Not Required to Further the Interests of the Judiciary or the Court Reporter

Fashioning an immunity rule requires balancing court reporters' functions against the costs to victims of constitutional violations. Absolute immunity contravenes the basic tenet that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Thus, absolute immunity is justified only when " 'the contributions of immunity to effective government in particular contexts outweigh the perhaps recurring harm to individual citizens.' " *Westfall*, 484 U.S. at 295-96 (quoting *Doe v. McMillan*, 412 U.S. 306, 320 (1973)).

Being forced to appeal without a transcript or, as here, with a reconstructed and admittedly inaccurate and incomplete record, creates an inherent risk of error and prejudice. The transcript – not the production of it – is essential to the appellate process. The judicial system should place a premium on enforcement of rules that enhance the administration of justice. Obedience to court orders is crucial to the smooth functioning of the courts. *Walker v. Birmingham*, 388 U.S. 307 (1967). Extending immunity to the dereliction of express statutory duties and court orders directly contravenes public policy and undermines the essence of the rule of law.

C. Historical Precedent Does Not Recognize Absolute Immunity for Court Reporters

Just as public policy does not support immunity, neither does history. The Court has "refused to grant . . . immunity under § 1983" and, by extension, under *Bivens*,[23] where there was no historical or early common law recognition of such immunity. *Burns*, 111 S. Ct. at 1945-46 (Scalia, J., concurring in part and dissenting in part). In analyzing immunity claims, the Court has consistently recognized that the Civil Rights Act of 1871 did not intend to "abolish wholesale all common-law immunities," *Pierson*, 386 U.S. at 554, or to create new immunities. *See Malley*, 475 U.S. at 342. Thus, pre-1872 common law is the starting point: a common-law tradition of absolute immunity is a necessary, although not sufficient, condition for absolute immunity under section 1983 and *Bivens* claims. *Burns*, 111 S. Ct. at 1945 (Scalia, J., concurring in part and dissenting in part).

The burden of proving a common law tradition of absolute immunity rests squarely on the party claiming immunity – here, the court reporter. *Id.* at 1939. No case authority suggests that court reporters enjoyed absolute immunity under early common law. Nor did any other official charged with the task of preparing and providing a transcript of court proceedings enjoy such immunity.[24] To the contrary, court employees could be held liable for

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[23] *See supra* note 6.

[24] The production of a verbatim record of proceedings was not an ordinary part of the judicial process prior to 1871; court reporting became commonplace only in the twentieth century. *See generally* Oswald M.T. Ratteray, *Verbatim Reporting Comes of Age*, 56 JUDICATURE 368 (1973). Hence there was no early common law tradition of immunity for stenographers.

failure to provide timely transcripts. *E.g., Bates v. Foree,* 67 Ky. (4 Bush) 430 (1868) (clerk charged with providing transcript could be liable on bond).

Absolute judicial immunity has a long common law tradition. *See Bradley,* 80 U.S. (13 Wall.) at 347. The early American courts also recognized qualified judicial immunity for certain acts. Although sometimes differing as to which level of immunity was appropriate, the early decisions were virtually unanimous that judges, other officials performing judicial functions, and public officials and employees participating in judicial proceedings had no immunity for purely "ministerial" acts.[25] Immunity attached only to "discretionary" functions or functions requiring the exercise of judgment. *See* THOMAS M. COOLEY, LAW OF TORTS 413 (1880).[26]

Early decisions foreshadowed the functional approach used by the Court today. In determining, for example, that tax assessors performed judicial acts in making assessments, one court observed:

> To make the figures indicating a deduction and to make the deduction itself, on the assessment-

[25] *Wall v. Trumbull,* 16 Mich. 228, 234 (1867); *Reed v. Conway,* 20 Mo. 22, 52-53 (1854); *Barhyte v. Shepherd,* 35 N.Y. 238, 241 (1866); *id.* at 247 (Hunt, J., concurring).

[26] The lone exception to this rule that immunity attached only to judicial or discretionary functions was the rule that "[a] ministerial officer cannot be held liable in such a case, where the precept or order under which he acts comes to him from the proper source, and is within the apparent authority of the body or officer issuing or making it." *Wall,* 16 Mich. at 232-33 (citations omitted). Such immunity could be either absolute or qualified. *See* cases cited *supra* note 25.

> roll, may be conceded to be a ministerial act; but to arrive at the conclusion, by hearing and weighing evidence, judging of its credibility, and comparing the evidence with the provisions of law, that the plaintiff was entitled to a deduction, is as far from a ministerial act as can well be imagined.

Barhyte, 35 N.Y. at 251 (Hunt, J., concurring).[27]

Consequently, absolute immunity applied only to those engaged in discretionary, decisionmaking conduct, such as

> "to military and naval officers in exercising their authority to order courts-martial for the trial of their inferiors; . . . to grand and petit jurors in the discharge of their duties as such; to assessors upon whom is imposed the duty of valuing property for the purpose of a levy of taxes; to commissioners appointed to appraise damages when property is taken under the right of eminent domain; to officers empowered to lay out, alter, and discontinue highways; . . . to members of a township board in deciding upon the

[27] Justice Hunt's analysis was echoed in the Court's later cases addressing judicial immunity, such as *Forrester,* 484 U.S. at 227-28. Where judges perform administrative functions, they are not entitled to absolute immunity, even where such functions can affect judicial performance and require the exercise of discretion. *Id.* at 228-29. *See also Wall,* 16 Mich. at 235 (township board immune when evaluating claims brought against township); *Harrington v. Commissioners,* 2 McCord 400 (S.C. 1823) (road commissioners immune in making assessments); *Freeman v. Cornwall,* 10 Johns. 470 (N.Y. 1813) (overseer of highways immune for judging persons in default); *Easton v. Calendar,* 11 Wend. 90 (N.Y. 1833) (school district trustees immune for tax apportionments).

> allowance of claims; . . . to the collector of customs in exercising his authority to sell perishable property, and in fixing upon the time for notice of sale."

Burns, 111 S. Ct. at 1946 (quoting COOLEY, LAW OF TORTS 410-11). *See generally* EDWARD P. WEEKS, *Damnum Absque Injuria* § 109, at 209-10 (1879), and cases cited therein. Absolute immunity was never applied to nonjudicial acts.[28]

The Court's modern immunity analysis reflects the teachings of the common law. Absolute judicial immunity requires a judicial act.

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[28] Nonetheless, even absolute immunity was not entirely absolute. Many courts refused to allow immunity for conduct beyond or in excess of jurisdiction. *See, e.g., People ex rel. Mygatt v. Supervisors of Chenango County*, 11 N.Y. 563 (1854). *Cf. Stump*, 435 U.S. at 356-57 (no immunity for acts done in "clear absence of all jurisdiction") (citation omitted); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1872). *See generally* Jay M. Feinman & Roy S. Cohen, *Suing Judges: History and Theory*, 31 S.C. L. REV. 201, 224-33 (1980) (in pre-1872 common law, judges in courts of limited jurisdiction sometimes lost immunity for acts in excess of jurisdiction). *See* cases cited in *Wall*, 16 Mich. at 245-53 (Campbell, J., dissenting).

Immunity also was not available at common law in situations where a public officer *defied* a court order. *Wall*, 16 Mich. at 234-35; *Reed*, 20 Mo. at 50-51 (citing Chief Justice Taney's opinion in *Kendall v. Stokes*, 44 U.S. (3 How.) 87, 98 (1845)); *Ferguson v. Earl of Kinnoull*, 9 Clark & Finnelly 251, 263, 275-76, 279-80, 291, 306-07, 311-14 (1842). Hence, even a tribunal charged with performing a judicial act had no immunity for refusal to perform the act, notwithstanding that the tribunal enjoyed absolute immunity for performing it improperly, even maliciously. *Ferguson v. Earl of Kinnoull, supra*.

III. QUALIFIED IMMUNITY ADEQUATELY PROTECTS THE INTERESTS OF COURT REPORTERS

Qualified, not absolute, immunity is the norm, *Burns*, 111 S. Ct. at 1939, and is adequate to protect the interests of most public officials and employees, *see Wyatt v. Cole*, 112 S. Ct. 1827, 1833 (1992). Government officials performing discretionary functions are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818.[29] As Justice White wrote, qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley*, 475 U.S. at 341. At most, court reporters are entitled to qualified immunity.

Indeed, the majority of federal courts that have considered the issue hold that court reporters are entitled to qualified immunity.[30] In contrast, the court below and the

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[29] The early common law also provided qualified immunity to judicial officers and employees who, although not engaged in adjudication and thus ineligible for absolute immunity, engaged in official acts related to adjudication and requiring discretion. *Burns*, 111 S. Ct. at 1947 (Scalia, J., concurring in part and dissenting in part).

[30] Circuit and district courts in the Second, Third, Fifth, Sixth, Eighth, and Eleventh Circuits afford court reporters qualified immunity. *Green*, 722 F.2d at 1018-19 (qualified immunity for altering transcript); *Rheuark v. Shaw*, 628 F.2d 297, 305 (5th Cir. 1980) (only qualified immunity for failure to provide requested transcripts), *cert. denied*, 450 U.S. 931 (1981); *Slavin v. Curry*, 574 F.2d 1256, 1265 (no absolute immunity for inaccurate trial transcript), *modified, reh'g denied*, 583 F.2d 779 (5th Cir. 1978); *McLallen*, 492 F.2d at 1300; *Mathis*, 761 F. Supp. at 1029

Seventh Circuit are the only circuits to grant absolute immunity to court reporters.[31]

One of the most oft-cited authorities for the denial of absolute immunity to court reporters is the Eighth Circuit's decision in *McLallen v. Henderson*, 492 F.2d 1298 (8th Cir. 1974).[32] The court held that absolute immunity does not protect court reporters from a suit for damages for failure to deliver a convicted indigent's transcript within a reasonable time. The court reasoned that because court reporters' duties are ministerial in nature, they are not

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(neither absolute nor qualified immunity for alleged conduct that resulted in a six-year delay in the plaintiff's criminal appeal); *Odom v. Wilson*, 517 F. Supp. 474, 476 (S.D. Ohio 1981) (no absolute immunity for court reporters); *Mourat v. Common Pleas Court*, 515 F. Supp. 1074, 1076 (E.D. Pa. 1981) (only qualified immunity for an alleged purposefully inaccurate and erroneous transcript); *Jackson v. Rowell*, 1992 U.S. Dist. LEXIS 17268 (S.D. Ala. Sept. 2, 1992) (qualified immunity for court reporters).

In dicta, the Fourth Circuit also declined to grant a court reporter absolute immunity. See *McCray v. Maryland*, 456 F.2d 1, 4 (4th Cir. 1972).

[31] *Scruggs v. Moellering*, 870 F.2d 376, 377 (7th Cir.) (absolute immunity barred a claim against court reporter for alleged falsification of trial transcript), *cert. denied*, 493 U.S. 956 (1989); *Dellenbach v. Letsinger*, 889 F.2d 755, 763 (7th Cir. 1989) (absolute immunity barred an action arising from two court reporters' alleged participation in a conspiracy to compel the plaintiff to obtain and pay for unneeded and unnecessary transcripts), *cert. denied*, 494 U.S. 1085 (1990).

[32] The Eighth Circuit reaffirmed this qualified immunity holding in two subsequent opinions: *Holt v. Dunn*, 741 F.2d 169, 170 (8th Cir. 1984) (only qualified immunity for delay in preparing criminal transcript), and *Smith v. Tandy*, 897 F.2d 355, 356 (8th Cir.) (only qualified immunity for alleged omission in criminal transcript), *cert. denied*, 111 S. Ct. 177 (1990).

entitled to absolute immunity when they violate constitutional rights. Even then, court reporters are entitled to qualified immunity only if they can demonstrate they were "acting pursuant to [their] lawful authority and following in good faith the instructions or rules of the Court and [were] not in derogation of those instructions or rules." 492 F.2d at 1300.

Qualified immunity would adequately protect court reporters from unwarranted litigation. Court reporters should not be afforded greater protection than cabinet members, FBI agents, Presidential aides, governors, police officers, school officials, or prison officials. Many of these individuals exercise complex discretionary responsibilities that are crucial to government functions. Yet because absolute immunity is such "strong medicine," even these officials are granted only qualified immunity.[33]

In addition, qualified immunity is sufficient to further the policy of preventing frivolous litigation by permitting the quick termination of insubstantial lawsuits at an early stage. *Harlow*, 457 U.S. at 818. Thus, a qualified immunity standard would immunize all but the most egregious conduct by court reporters. Court reporters who make good faith efforts to exercise their statutory duties and follow procedures have nothing to fear from

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[33] *See Malley v. Briggs*, 475 U.S. 335 (1986) (police officers); *Scheuer v. Rhodes*, 416 U.S. 232 (1974) (governors); *Cleavinger v. Saxner*, 474 U.S. 193 (1985) (corrections officers); *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (Attorney General); *Anderson v. Creighton*, 483 U.S. 635 (1987) (FBI agents); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (Presidential aides).

the application of qualified immunity. Only those individuals who willfully shirk their statutory duties or defy court orders must answer for their conduct, as they should. The Ninth Circuit erred in rejecting qualified immunity as the standard for court reporters.

CONCLUSION

The Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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APPENDIX A

28 U.S.C. § 753(b)

§ 753(b).

Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court as may be requested by any party to the proceeding.

The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years.

The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and

proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made.

The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.
